

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85058793
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ARGUMENT(S)	
<u>REMARKS</u>	
<p><u>Refusal under Section 2(d)</u></p> <p>In the Office Action dated May 8, 2011, the Examining Attorney refused registration of Applicant's mark under Trademark Act § 2(d), 15 U.S.C. §1052(d), indicating that a likelihood of confusion exists between Applicant's mark and the mark that is the subject of Registration No. 3,001,381 for the mark CITY'S BEST. For the reasons articulated herein, Applicant respectfully requests that the Examining Attorney withdraw the Section 2(d) refusal and allow Applicant's mark to proceed to publication in the <i>Official Gazette</i>.</p> <p>Applicant notes that upon review it realized that the contents of the Office Action and marks discussed therein were not related to Applicant's application for the mark TOUGH LINKS (U.S. Ser. No. 85/058,793). Rather, the Office Action discussed the Section 2(d) refusal with respect to the application for the mark CITY'S BEST DEALS and the registration for the mark CITY'S BEST. <u>See Exhibit A.</u></p> <p>In light of the foregoing, Applicant contacted the Examining Attorney via email to inquire about the contents of the Office Action. On May 11, 2011, the Examining Attorney responded to Applicant and apologized for the inadvertent error in the issuance of the incorrect Office Action and submitted that the error would be rectified that day. <u>See Exhibit B.</u></p>	

Applicant has been periodically checking the TARR status page of the USPTO, since it did not receive any additional notification or correspondence regarding the status of its application after the Examining Attorney's May email exchange. The Office Action has yet to be withdrawn from the record. Applicant has sent several follow-up emails to the Examining Attorney and has left several voicemail messages for her to inquire about the status of the situation but it has been to no avail. See Exhibit C. Thus, in light of the upcoming deadline in which to provide a Response to the Office Action, Applicant is submitting this explanation for the official record and requests that the Examining Attorney withdraw the Section 2(d) refusal.

CONCLUSION

Based on the foregoing, Applicant respectfully requests that its application proceed to publication in the *Official Gazette*. The Examining Attorney is invited to contact the undersigned with any questions concerning this matter.

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2011/10/10/20111010180603658890-85058793-003_001/evi_63120104168-175345941_.TOUGH_LINKS__Exhibit_A_.pdf
CONVERTED PDF FILE(S) (14 pages)	\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793\xml6\RFR0002.JPG
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	\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793\xml6\RFR0005.JPG
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	<u>\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793 \xml6\RFR0012.JPG</u>
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CONVERTED PDF FILE(S) (2 pages)	<u>\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793 \xml6\RFR0016.JPG</u>
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ORIGINAL PDF FILE	http://tgate/PDF/RFR/2011/10/10/20111010180603658890-85058793-003_003/evi_63120104168-175345941_._TOUGH_LINKS__Exhibit_C____.pdf
CONVERTED PDF FILE(S) (4 pages)	<u>\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793 \xml6\RFR0018.JPG</u>
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	<u>\\TICRS\EXPORT11\IMAGEOUT11\850\587\85058793 \xml6\RFR0021.JPG</u>
DESCRIPTION OF EVIDENCE FILE	Exhibits A-C as referenced in the Argument Section of this Response to Office Action
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Erin R. Zaskoda/

SIGNATORY'S NAME	Erin R. Zaskoda
SIGNATORY'S POSITION	Authorized Attorney, California bar member
DATE SIGNED	10/10/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Oct 10 18:06:03 EDT 2011
TEAS STAMP	USPTO/RFR-63.120.104.168- 20111010180603658890-8505 8793-480ad523338743638973 a15d5d29ef7a3f-N/A-N/A-20 111010175345941986

PTO Form (Rev 4/2000)

OMB No. 0651-..... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **85058793** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

REMARKS

Refusal under Section 2(d)

In the Office Action dated May 8, 2011, the Examining Attorney refused registration of Applicant's mark under Trademark Act § 2(d), 15 U.S.C. §1052(d), indicating that a likelihood of confusion exists between Applicant's mark and the mark that is the subject of Registration No. 3,001,381 for the mark CITY'S BEST. For the reasons articulated herein, Applicant respectfully requests that the Examining Attorney withdraw the Section 2(d) refusal and allow Applicant's mark to proceed to publication in the *Official Gazette*.

Applicant notes that upon review it realized that the contents of the Office Action and marks discussed therein were not related to Applicant's application for the mark TOUGH LINKS (U.S. Ser. No, 85/058,793). Rather, the Office Action discussed the Section 2(d) refusal with respect to the application for the mark CITY'S BEST DEALS and the registration for the mark CITY'S BEST. See Exhibit A.

In light of the foregoing, Applicant contacted the Examining Attorney via email to inquire about the contents of the Office Action. On May 11, 2011, the Examining Attorney responded to Applicant and apologized for the inadvertent error in the issuance of the incorrect Office Action and submitted that the error would be rectified that day. See Exhibit B.

Applicant has been periodically checking the TARR status page of the USPTO, since it did not receive any additional notification or correspondence regarding the status of its application after the Examining Attorney's May email exchange. The Office Action has yet to be withdrawn from the record. Applicant has sent several follow-up emails to the Examining Attorney and has left several voicemail messages for her to inquire about the status of the situation but it has been to no avail. See Exhibit C. Thus, in light of the upcoming deadline in which to provide a Response to the Office Action, Applicant is submitting this explanation for the official record and requests that the Examining Attorney withdraw the Section 2(d) refusal.

CONCLUSION

Based on the foregoing, Applicant respectfully requests that its application proceed to publication in the *Official Gazette*. The Examining Attorney is invited to contact the undersigned with any questions concerning this matter.

EVIDENCE

Evidence in the nature of Exhibits A-C as referenced in the Argument Section of this Response to Office Action has been attached.

Original PDF file:

http://tgate/PDF/RFR/2011/10/10/20111010180603658890-85058793-003_001/evi_63120104168-175345941_.TOUGH_LINKS_Exhibit_A_.pdf

Converted PDF file(s) (14 pages)

Evidence-1

Evidence-2

Evidence-3
Evidence-4
Evidence-5
Evidence-6
Evidence-7
Evidence-8
Evidence-9
Evidence-10
Evidence-11
Evidence-12
Evidence-13
Evidence-14

Original PDF file:

http://tgate/PDF/RFR/2011/10/10/20111010180603658890-85058793-003_002/evi_63120104168-175345941_.TOUGH_LINKS__Exhibit_B_.pdf

Converted PDF file(s) (2 pages)

Evidence-1
Evidence-2

Original PDF file:

http://tgate/PDF/RFR/2011/10/10/20111010180603658890-85058793-003_003/evi_63120104168-175345941_.TOUGH_LINKS__Exhibit_C____.pdf

Converted PDF file(s) (4 pages)

Evidence-1
Evidence-2
Evidence-3
Evidence-4

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Erin R. Zaskoda/ Date: 10/10/2011

Signatory's Name: Erin R. Zaskoda

Signatory's Position: Authorized Attorney, California bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85058793

Internet Transmission Date: Mon Oct 10 18:06:03 EDT 2011

TEAS Stamp: USPTO/RFR-63.120.104.168-201110101806036

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